1, 1898, c. 541, 30 Stat. 551 [U. S. Comp. St. 1901, p. 3428]), providing that a discharge in bankruptcy shall release a bankrupt from all his provable debts, except such as were created by his fraud, embezzlement, or defalcation while acting as an officer or in a fiduciary capacity, a discharge in bankruptcy cancels a judgment obtained on a debt incurred by a broker by failure to return to his customer securities deposited with him as collateral against loss, as the act was not a fraud committed in a fiduciary capacity.

2. Under Bankr. Act 1898, sec. 17, cl. 2, providing that a discharge in bankruptcy shall release a bankrupt from all his provable debts except judgments in actions for fraud, a discharge in bankruptcy releases a judgment in an action of trover and conversion, as it is not an action for fraud. *Crosby* v. *Miller* (R. I.), 55 Atl. 328.

Per Douglas, J:

"It is well settled by authority of the United States courts that the words 'fiduciary capacity,' as used in this and the preceding bankrupt acts, do not describe the relation which a broker holds to his customer for whom he is buying and selling, and who has deposited with him collateral securities against loss in such transactions. *Chapman* v. *Forsyth*, 2 How. 202, 11 L. Ed. 236, under the act of 1841, dealt with the case of a facter who had retained the money of his principal. Under the act of 1867, in the case of *Hennequin* v. *Clews*, 111 U. S. 676, 4 Sup. Ct. 576, 28 L. Ed. 565, the court applied the construction adopted in *Chapman* v. *Forsyth* to the words of the later act, and held that the relation of broker to his customer was analogous to that of factor to principal, and equally outside of the words 'fiduciary capacity' in the meaning of the law. Mr. Justice Bradley, delivering the opinion of the court, says: 'There is no more—there is not so much—of the character of trustee in one who holds collateral security for a debt as in one who receives money from the sale of his principal's property; money which belongs to his principal alone, and not to him, and which it is his duty to turn over to his principal without delay. The creditor who holds a collateral holds it for his own benefit under contract. He is in no sense a trustee. His contract binds him to return it when its purpose as security is fulfilled, and if he fails to do so it is only a breach of contract, and not a breach of trust.' The case is exactly in point, and decisive of the motion now before us; for the act of 1898 evidently uses those words in the same sense which judicial construction has fixed upon them under the acts of 1841 and 1867."

Citing further *Brachen v. Milner* (C. C.), 104 Fed. 522; *Case of Basch* (D. C.), 97 Fed. 761; *Neal* v. *Clark*, 95 U. S. 704. Cf. *Morse v. Kaufman*, 100 Va. 218; *Goldin* v. *Buch*, 8 Va. Law Register, 131.

FIFTY DOLLAR LAW—CONSTITUTIONALITY.—The Court of Appeals has recently passed upon the constitutionality of section 3652 of the Code of Virginia, commonly known as the fifty dollar law. In the case of *Marston* v. *Oliver*, in the Corporation Court of Newport News, the section was attacked

on two grounds: first, that it proposes to give "a laboring man being a householder" more than two thousand dollars, the limit fixed by section 190 of the constitution, which entitles every householder or head of a family to hold exempt "in addition to the *articles* now exempt . . . . . real and personal property, or either, including money and debts due him, to the value of not exceeding two thousand dollars to be selected by him;" and, second, because it undertakes to give to the householder an exemption which he does not have to "set apart," as prescribed by section 192 of the Constitution. That section is as follows:

"The General Assembly shall prescribe the manner and the conditions on which a householder or head of a family shall set apart and hold for himself a homestead in any of the property hereinbefore mentioned."

The contention was made, that under this section the Legislature must prescribe how the exemption shall be set apart, and, when it makes a provision for the setting apart and allows all that it is authorized to allow, its functions are at an end and it cannot enact any other law authorizing the mere *holding* of a further exemption, equivalent to a principal sum of ten thousand dollars—*i. e.*, a sum which at six per cent. per annum interest would yield fifty dollars per month. In support of this construction, several cases were cited, among them *Duncan* v. *Barrett*, 11 S. C. 332, 32 Am. Rep. 476, in which it was held that the Legislature cannot create new subjects of exemption in addition to those enumerated by the Constitution.

The lower court overruled the construction and a petition for a writ of error to the judgment was denied by the Court of Appeals. As the question involved the constitutionality of an act of assembly, the refusal of the court to grant the writ of error was doubtless upon the merits, and for this reason is worthy of note.

(MEMORANDUM.—We have only the assurance of counsel for plaintiff below that the writ was refused in this case. The records of the court do not show the fact, and courts speak only by their records. An inspection of the transcript of the record presented to the court and an examination of its order-book disclose no action whatever upon the case. As the transcript was handed to the court *in banc* and the refusal was made by it, there is upon it, of course, no endorsement of its action by the individual judges, as is the case when the refusal is made in vacation; but neither is there any endorsement upon the transcript by the clerk that the writ was refused, nor, as above stated, entry in the order-book—in a word there is nothing in the papers of the case or records of the court to show that action was ever taken in the matter. We learn that this is the usual practice of our appellate court, but it does not seem to us scientific record keeping, nor to be in accordance with the customs of the clerks' offices of the inferior state courts. Certainly no plea of estoppel by record could be sustained under these facts. Again, if the case had involved a federal question and an appeal had been taken to the Supreme Court of the United States, it would have to be refused or dismissed as improvidently awarded because it would not appear from the record to have been passed upon by the highest state court having jurisdiction.—EDITOR VIRGINIA LAW REGISTER).